



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tim Tidwell Construction Company, Inc.--
Reconsideration

File: B-238793.2

Date: August 6, 1990

Tim Tidwell, for the protester.
Robert C. Arsenoff, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is dismissed where issues raised have been decided on the merits by a court of competent jurisdiction.

DECISION

Tim Tidwell Construction Company, Inc. requests reconsideration of our March 8, 1990, dismissal of its protest against the award of a contract to Mid-South Dredging Company under invitation for bids No. DACW03-90-B-0007, issued as a total small business set-aside by the United States Army Corps of Engineers for designated dredging services. Tidwell principally alleged that Mid-South was not a small business and that the agency improperly declined to refer the awardee's size status to the Small Business Administration.

After filing its request for reconsideration on April 9, Tidwell on April 20 filed a complaint in the United States District Court for the Eastern District of Arkansas, containing the same allegations that it raised in its protest and in the request for reconsideration. Tim Tidwell Constr. Co., Inc. v. United States, No. LR-C-90-253 (E.D. Ark. July 16, 1990). On June 25, the government moved to dismiss the complaint under Federal Rule of Civil Procedure 41(b)--"involuntary dismissal." By order of the court dated July 16, the government's motion was granted and the complaint was dismissed.

The applicable Federal Rule provides, that, absent exceptions not pertinent to this case, an involuntary dismissal "operates as an adjudication on the merits." Our

049189 / 141994

Bid Protest Regulations provide that this Office will not consider protests where the issues raised have been decided on the merits by a court of competent jurisdiction. See 4 C.F.R. § 21.3(m)(11) (1990).

Accordingly, the request for reconsideration is dismissed.

A handwritten signature in black ink, appearing to read "John Brosnan", with a long horizontal flourish extending to the right.

John Brosnan
Assistant General Counsel